

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. )  
W.A. DREW EDMONDSON, in his )  
Capacity as ATTORNEY GENERAL OF )  
THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C MILES TOLBERT, )  
in his capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA, )

Plaintiffs, )

v. )

Case No. 4:05-CV-329-GKF-SAJ

TYSON FOODS, INC., )  
TYSON POULTRY, INC., )  
TYSON CHICKEN, INC., )  
COBB-VANTRESS, INC., )  
CAL-MAINE FOODS, INC., )  
CAL-MAINE FARMS, INC., )  
CARGILL, INC., )  
CARGILL TURKEY PRODUCTION, LLC, )  
GEORGE'S, INC., )  
GEORGE'S FARMS, INC., )  
PETERSON FARMS, INC., )  
SIMMONS FOODS, INC., )  
WILLOW BROOK FOODS, INC., )

Defendants. )

**AFFIDAVIT OF JOHN ELROD**

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF WASHINGTON )

The undersigned, John Elrod, being duly sworn upon oath, deposes and states as follows:

1. I make this affidavit in my capacity as counsel for Defendant Simmons Foods, Inc. in

this case.

2. Simmons and several other of the Defendants in this case were defendants in the City of Tulsa case before this Court.

3. For several years, Oklahoma Attorney General Drew Edmondson has been threatening to sue various participants in the poultry industry, including Simmons. Simmons and others have participated in a variety of informal discussions with the Attorney General's office concerning the topic of potential litigation, before this lawsuit was actually filed.

4. In connection with the claims made by the Attorney General, Simmons agreed with the other Defendants to share among themselves for purposes of their joint interest in this controversy, information which would be privileged and confidential as to third parties and to maintain that confidentiality as to third parties. Eventually in 2005 the Defendants in this case memorialized their agreement in the form of a written joint defense and confidentiality agreement.

5. I, as well as other counsel for Simmons, have participated in numerous discussions with counsel for other Defendants concerning our common interests and strategies in this case. Some of those discussions have included non-lawyer representatives of Simmons as well as of other Defendants. It has been my understanding and intent as counsel for Simmons that, with respect to each and every one of those communications, Simmons was protected by all applicable privileges to the extent allowed by law. Simmons has made no intentional and knowing waivers of those privileges and has not authorized me to waive those privileges on its behalf.

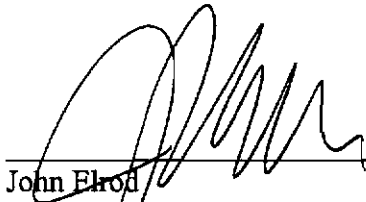
6. I understood that the parties to the joint defense agreement would not disclose any information obtained from each other without permission.

7. Neither I, my client nor anyone else at my law firm has, to my knowledge, ever

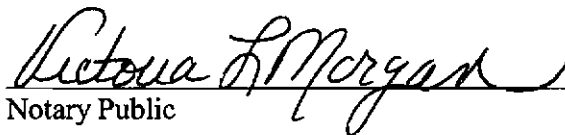
disclosed to Plaintiff or to third parties any confidential or privileged information obtained from any other Defendant pursuant to the joint defense agreement, and Simmons has never authorized any other Defendant or their counsel to disclose privileged information to Plaintiff or to third parties.

8. I have reviewed Simmons' privilege logs produced in this case. The entries reflecting joint defense privilege concern materials to which the joint defense privilege applies. That is, for each of the documents listed on the Simmons privilege logs and noted "joint defense," it is my understanding those materials arose in the course of our joint defense effort and were designed to further that joint defense effort.

Further Affiant sayeth not.

  
\_\_\_\_\_  
John Elrod

Subscribed and sworn to before me this 24<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

1-25-2012

